

DPS-256

May 26, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **05-1167**

UNITED STATES OF AMERICA

VS.

CURTIS L. MCKEITHAN

(M.D. PA. CRIM. NO. 00-CR-00278-1)

Present: ROTH, BARRY and SMITH, Circuit Judges

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) Appellant's motion for counsel; and
- (3) Appellant's motion to amend his § 2255 motion

in the above-captioned case.

Respectfully,
Clerk

MMW/RL/cmh

ORDER

The foregoing application for a certificate of appealability is denied. For essentially the reasons explained by the District Court, McKeithan has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). McKeithan's motion to amend his § 2255 motion is denied. United States v. Booker, 125 S.Ct. 738 (2005), does not apply retroactively to his § 2255 motion. See Lloyd v. United States, C.A. No. 04-3549, slip. op. (3d Cir. May 17, 2005). McKeithan's motion for the appointment of counsel is denied.

By the Court,
/s/ D. Brooks Smith
Circuit Judge

Dated: August 19, 2005
CMH/cc: CLM, GADZ

